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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XV
MICHIGAN
OHIO

August 14, 2023

Via e-mail only to: [redacted content]

Vickie Coe, Esq.
Clark Hill PLC
215 South Washington Square
Suite 200
Lansing, Michigan 48933

Re: OCR Docket No. 15-23-1278

Dear Ms. Coe:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content], with the U.S. Department of Education, Office for Civil Rights (OCR), against Dearborn Public Schools (the District) alleging that during the [redacted content] school year the District discriminated against students with [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] in three [redacted content] classrooms at [redacted content] [redacted content] [redacted content] (the School) by not staffing these classrooms with teachers who are certified in the [redacted content] program area, resulting in disorder in each of the classrooms and students in these classrooms being denied a free appropriate public education (FAPE).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of federal financial assistance from the Department of Education and as a public entity, the District is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR opened an investigation of the following legal issue: whether the District failed to provide qualified students with disabilities with a FAPE because the students' teachers were not trained in the instruction of persons with the disability in question, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.

During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and District staff.

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Facts

The School has five classrooms with [redacted content] [redacted content] programs that have been designated for students who exhibit [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. The District identified these classrooms as classroom #s 1-5. Each classroom can include up to seven students and is staffed with a teacher and at least one paraprofessional. The Complainant told OCR that since [redacted content] the first day of the [redacted content] school year the District had not staffed three of these program classrooms with teachers who were qualified to teach students with [redacted content]. The Complainant stated that the District was staffing these classrooms with noncertified substitute teachers or teachers who did not have [redacted content] endorsements. The Complainant alleged that, as a result, the students in these three [redacted content] program classrooms were being denied a FAPE. The Complainant said that students were running in the halls of the School and one student would not attend school because he was traumatized.

- [redacted content] Classroom Staffing

The District submitted documents to OCR, including information from the [redacted content] school year up to March 29, [redacted content], which show that the District staffed only one of the five [redacted content] program classrooms (classroom #3) with a certified teacher endorsed to teach students with [redacted content]. It staffed classroom #4 with a certified teacher with a “Continuing Temporary Approval” to teach students with [redacted content]. From the beginning of the [redacted content] school year until mid-November [redacted content], it staffed classroom #2 with a certified teacher with a standard teaching certificate that included qualification to teach students with learning disabilities, but no [redacted content] certification. That teacher left in mid-November [redacted content], and the class was covered by substitute teachers. The teacher also had multiple absences prior to leaving in mid-November and those absences were also covered by substitute teachers. Classroom #2 had nine different substitute teachers through March 29, [redacted content], none of whom had teaching certificates and only four of whom had bachelor’s degrees. From January 13 to March 29, except for two days in March, when there were two different substitute teachers, classroom #2 was staffed with a special education paraprofessional with a bachelor’s degree who, according to District documents, had applied for a long-term substitute teacher permit. Teacher certification records that are publicly available on the Michigan Department of Education (MDE)’s website indicate that during the [redacted content] school year this paraprofessional applied for and received a full-year basic substitute permit.

The District staffed classroom #s 1 and 5 with substitute teachers from the beginning of the [redacted content] school year, none of whom had teaching certifications. Classroom #1 had 11 substitute teachers from the first day of school until March 30, two of whom the District designated as long-term substitute teachers. Three of the substitute teachers assigned to classroom #1 during this time period had no postsecondary education. The long-term substitute teachers both had associate’s degrees and daily substitute teacher permits. One of the long-term substitute teachers, from January 9, [redacted content], to March 29, [redacted content], was a special education paraprofessional with an associate’s degree who, according to the District, had submitted a long-term substitute teacher permit. This could not be confirmed in an MDE certification search, which showed her as having a daily substitute teacher permit. This

substitute teacher missed 15 school days, during which the District staffed classroom #1 with two different substitute teachers, one of whom had an associate's degree. The District did not provide OCR with information about the other substitute teacher's qualifications.

The District staffed classroom #5 with six different substitute teachers from the beginning of the school year, two of whom the District designated as long-term substitute teachers, although MDE's certification database showed that they had daily substitute teacher permits. The District did not designate a third substitute teacher who was in the classroom for over a month, from November 16 until December 22, as a long-term substitute teacher. Records show that this substitute teacher had a high school diploma and a daily substitute teacher permit. From January 9 to March 29 the District staffed classroom #5 with a special education paraprofessional who, according to the District, applied for a long-term substitute teacher permit. MDE records show, however, that she had a daily substitute teacher permit. The two designated long-term substitute teachers had associate's degrees. With few exceptions, nearly all of the substitutes in the [redacted content] programs at the school in classroom #s 1, 2 and 5, during the [redacted content] had daily substitute teacher permits.¹

The Districts' [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] told OCR on [redacted content], that the special education paraprofessionals were assigned to classroom #s 1, 2, and 5 until the end of the school year.

- Staff Training

In response to OCR's request for documents showing the training the substitute teachers received to prepare them for teaching in the [redacted content] program classrooms, the District provided documents showing that a District [redacted content] coach checked in with all the [redacted content] program classrooms, reviewed caseloads, observed individual students or classrooms, ordered supplies, checked in with "social work," and provided support with grades and progress reports. According to District documents, the [redacted content] coach also supported the paraprofessional substitute teachers in completing progress reports, looking at individualized education program (IEP) data, and determining students' progress. Another [redacted content] coach checked in in late February and early March to observe two students, check in on one of the substitute teacher's classrooms, order supplies for the room, and check in on "social work."

Additionally, a behavior specialist checked in on unidentified [redacted content] classrooms five times from the beginning of the school year to March 30, [redacted content], every four to six weeks, for one-hour sessions (except on February 9, [redacted content], which was for a two-hour session). The behavior specialist also met once with the social worker and provided a one-hour classroom consult, although the specific classroom was not identified. The behavior specialist also observed unidentified [redacted content] program classrooms twice in September and once in early October for one hour each day.

¹ According to Michigan law, this permit is designed to support temporary teacher absences, which includes intermittent daily substitute assignments and short-term vacancies, defined as less than 90 calendar days, where a properly prepared, certified, endorsed, or otherwise authorized individual is unavailable. Although the state superintendent has waived the 90-day limitation for assignments in general education classrooms, this waiver is not available for assignments in special education.

District data also shows that an [redacted content] behavior specialist/[redacted content] teacher provided check-in/support to unidentified classrooms 22 times from the beginning of the school year to March 30, [redacted content], for anywhere from 30 minutes to two hours on each occasion, sometimes to offer recess support or drop off academic materials. She also provided IEP observation, assessments, and formal testing in unidentified classrooms in ten instances, did paperwork one morning, and attended 12 IEP or other miscellaneous meetings.

The documentation the District provided also indicates that on August 25 and 26, [redacted content], the District offered an orientation session for new paraprofessionals that included training on crisis prevention intervention (CPI) and best practices for toileting. [redacted content] said that the paraprofessionals who were substitute teachers in classroom #s 1, 2 and 5 could have attended that training, although they were not newly hired. The other substitute teachers did not begin until August 29, [redacted content], and so would not have received the training. In addition, the District provided staff training every month on topics such as progress reporting, communication, data/behavioral intervention plans for [redacted content] budgets, meeting mechanics, and extended school year.

The data also indicates that, except in December, the District held monthly [redacted content] meetings at the School, although the District's documents indicate that the [redacted content] substitute teachers did not attend these meetings until January, after which two of the three substitute teachers may have attended. The information OCR reviewed indicated that, although teachers may have shared resources at these meetings, they did not provide training or mentoring. For example, in September [redacted content], one of the certified [redacted content] teachers at the School shared some online resource information with some of the staff regarding an online [redacted content] program. This e-mail indicates that the material included activities and themed material. In October [redacted content], a District special education coordinator shared resources to support the curriculum they were teaching with two of the [redacted content] substitute teachers at the time. [redacted content] told OCR that the District could not assign mentor teachers to the substitute teachers due to collective bargaining agreement issues. The District provided no information to indicate that it had a procedure in place to ensure that information and documents shared with one substitute were provided to later substitutes in the same classroom.

- Complaints

The District's documentation shows that on January 14, [redacted content], the parents of a student in one of the School's [redacted content] program classrooms being taught by a substitute teacher stated that they would not return their child to that classroom because he had been "traumatized" in the classroom without an endorsed [redacted content] teacher, and had not been evaluated as had been promised since June [redacted content]. The parents requested that their child be moved to another elementary school and the District granted their request. On January 31, [redacted content], the parents of another student in another [redacted content] class taught by a substitute teacher requested that their child be moved to a different classroom and the District agreed to do so. In May [redacted content] a third student in an [redacted content] classroom taught by a substitute teacher transferred to a different school within the District.

On February 2, [redacted content], MDE notified the District that it had received an inquiry regarding the qualifications of the individuals staffing three [redacted content] programs at the School. MDE stated that it had received a report that the District was staffing three of its [redacted content] programs with individuals with daily substitute teacher permits, and that during the [redacted content] school year it staffed one of the five [redacted content] programs with a general education teacher. MDE requested that the District provide its Office of Special Education the names of the staff assigned at the time to the [redacted content] programs. MDE noted that the U.S. Department of Education's Office of Special Education Programs had issued a memorandum, dated October 4, [redacted content], reminding districts that personnel qualifications could not be waived on an emergency, temporary, or provisional basis, including during periods of teacher shortages. It also noted that the Individuals with Disabilities in Education Act (IDEA) requires at a minimum that teachers have a bachelor's degree to teach special education programs. MDE also noted that the waiver of the 90-day limitation regarding using individuals with daily substitute teacher permits was not available for assignments in special education programs. The District did not provide OCR its response to MDE and [redacted content] told OCR that the District had not heard back from MDE regarding this matter which, [redacted content] said, was not a complaint.

- Attempts to Hire Qualified [redacted content] Teachers

According to [redacted content], the District has taken numerous and ongoing measures to hire qualified individuals for the [redacted content] program classrooms. For example, he stated that during meetings with District staff he requests certified teachers to consider getting endorsed in [redacted content] and transferring into [redacted content] programs. He said that the District works closely with the area colleges and universities, the county, and the teacher's union to find exceptions to the limitations that the collective bargaining agreement places on payment schedules so that the District can offer competitive contracts to prospective [redacted content] teachers. [redacted content] stated that the District takes as many student teachers and interns as it can and that he presents at area colleges and universities and uses that as a recruiting mechanism. He stated that the District also attends job fairs, including university job fairs, and also "recruits out," which means that they try to network and hire people from other districts. They also post job postings on their personal social media pages as well as on a District web page. In addition, the District offers annual bonuses for [redacted content] and [redacted content] [redacted content] certified teachers, to make it more appealing for those teachers to work in the District. In its document response, the District provided an undated list with 38 candidates' names who, for various reasons, were either not qualified or not interested in District [redacted content] teaching positions.

According to [redacted content], two of the three [redacted content] teacher positions that had been vacant at the School have been filled for the [redacted content] school year.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires public school districts to provide a free appropriate public education (FAPE) to all qualified students with disabilities in their jurisdictions. An appropriate education is defined at 34 C.F.R. § 104.33(b) as regular or special education and related aids and services that are designed to meet the individual needs of students

with disabilities as adequately as the needs of students without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-36, concerning educational setting, evaluation, placement, and procedural safeguards. Implementation of an IEP developed in accordance with the IDEA is one means of meeting these requirements. 34 C.F.R. § 104.33(b)(2).

Appendix A of the Section 504 regulation, in discussing the requirements of Section 104.33(b), states that the quality of the educational services provided to students with disabilities must equal that of the services provided to students without disabilities; thus, the teachers of students with disabilities must be trained in the instruction of persons with the disability in question and appropriate materials and equipment must be available.

The Section 504 regulation, at 34 C.F.R. § 104.6(a), provides that when OCR finds that a district has discriminated against persons on the basis of disability, the district shall take such remedial action as OCR deems necessary to overcome the effects of the discrimination. Compensatory services are required to remedy any educational or other deficits that result from a student with a disability not receiving the evaluations or services to which they were entitled.

Voluntary Resolution and Conclusion

Based on OCR's investigation to date, there is cause for concern that the District did not provide students in three [redacted content] programs at the School, in classroom #s 1, 2 and 5, which were center-based programs for students with [redacted content], with services consistent with the requirements of a FAPE, and thereby denied those students a FAPE. None of the teachers and substitute teachers in these three [redacted content] program classrooms were certified in special education, and most of the substitute teachers throughout the year had only daily substitute teacher permits. Several of the substitute teachers had no postsecondary education, at least as per District records. OCR is also concerned about the high turnover for substitute teachers in each of the [redacted content] program classrooms. District records indicated that during the [redacted content] school year, approximately 25 substitute teachers taught in the three classrooms at issue. OCR is also concerned that the lack of appropriate and consistent teaching staff in these classrooms may have led to behavioral and other issues, could have disrupted the continuity of information sharing regarding each of the students in the [redacted content] classrooms, and prevented the students from receiving FAPE. As noted above, one student would not attend school during the [redacted content] school year because he was traumatized. Further, information provided by the District shows that multiple parents requested that their children be transferred to either a different classroom with a certified teacher with [redacted content] endorsement or to a different school.

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On August 14, [redacted content], the District signed the enclosed Resolution Agreement, which, when fully

implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR looks forward to receiving the District's first monitoring report by **September 13, 2023**. For questions about implementation of the Agreement, please contact OCR attorney Dinola Phillips, who will be overseeing the monitoring and can be reached by telephone at (216) 522-2683 or by e-mail at Dinola.Phillips@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667 or by e-mail at Brenda.redmond@ed.gov.

Sincerely,

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure